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IN THE

Supreme Court of the United States

OCTOBER TERM, A.D., 1957.

No. 791

STELLA C. DAVIS and BETTY HORRIGAN,

Appellants,

vs.

ELLIOT W. SEYMOUR,

Appellee,

JURISDICTIONAL STATEMENT AND BRIEF.

STELLA C. DAVIS, PRO SE
4916 N. Magnolia Avenue,
Chicago, Illinois.

BETTY HORRIGAN, PRO SE
1303 Carmen Avenue,
Chicago, Illinois.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A.D., 1957.

No.

STELLA C. DAVIS and BETTY HORRIGAN,

Appellants,

vs.

ELLIOT W. SEYMOUR,

Appellee,

JURISDICTIONAL STATEMENT AND BRIEF.

To the Honorable Earl Warren, Chief Justice, and Associate Justices of the Supreme Court of the United States:

Stella C. Davis, and Betty Horrigan, appellants, Pro Se, hereby present their Jurisdictional Statement in support of their appeal to this court to review the Order of the United States District Court for the Northern District of California, Southern Division entered on November 20, 1956, dismissing their complaint. The Honorable, George B. Harris did not render an opinion in this cause of action. The court did not enter findings of Fact or conclusions of Law in this action.

JURISDICTION.

The United States District Court for the Northern District of California, Southern Division entered it's Order dismissing the plaintiff's complaint upon Motion to Dismiss by the appellee on November 20, 1956.

The appellants believe this Honorable Court has the power to review the Order of the district court on appeal pursuant to 28 U.S.C. section 1252. *Andrew County* v. *Maxwell,* 347 Mo. 156, 146 S.

The court took jurisdiction of the subject matter of criminal violations alleged in the complaint under a civil action, namely allegations based on U.S.C. Title 18, sec. 371, the general conspiracy statue, 18 U.S.C. sec. 241, *U. S.* v. *Patrick C. C.,* Tenn. 1893 54 F. 338. Civil Rights, also 28 U.S.C.A. sec. 1343(1) act done in furtherance of any conspiracy mentioned in sec. 47 title 8 U.S.C. *Collan* v. *Wilson,* 127 U.S. 540. *Avery* v. *State of Ala.* 1940 60 S. Ct. 308 U.S. 444-84 L. ed. 377.

Unlawful Searches may violate the 4th Amendment to the Constitution made by subterfuge or fraud rather than by force. *Carroll* v. *U.S.,* 267 U.S. 132. Ex Parte Virginia, 100 U.S. 346-7.

The court excluded considerations of the FACTS and MERITS of the action. 12 U.S.C. sec. 38, National Bank Act—Ch. 106 6 13 Stat. 101 *Christopher* v. *Norvell,* 291 U.S. 216 S. Ct. 502—L ed. 732.

Interstate conspiracy wherein defendant made use of Federal Communications and U.S. Mail to perpetrate fraud and conspiracy upon appellants. *Magnum Import Co.* v. *McCoty,* N.Y. 1923-43 S. Ct. 262 U.S. 159 67 L. ed.

922. Ray M. Foreman, mentioned in the complaint was an "Officer of the United States" and Justice Department at that time. *Hoeppel* v. *U.S.*, 1936, 85 F. 2d, 66 App. D.C. Article 2 section 109 of the Constitution.

Section 1252, U.S.C. 28 permits direct appeals from U.S. district courts regarding Crimes and Criminals, and there are federal questions of substance not theretofore determined by the Supreme Court of the United States in this cause of action.

The office of attorney is of public concern and regards the administration of Justice, as attorneys are "officers of the court." Bradley-7 Wall, 364, 19 L. ed. 214. Also 28 U.S.C.A. sec. 1442, "Misconduct & Color of office", *Logeman* v. *Stock*, 337, 81 F. Supp. 1949 of U.S.C. title 18, sec. 203. Also 28 U.S.C.A. sec. 1339, Ch. 646-62 Stat. 932, Postal Matters.

STATUTES INVOLVED

A conspiracy to invade the rights of another person is a Grave Offense-for which a jury trial is requisite • • •. *Collan* v. *Wilson*-127 U.S. 540.

Unlawful Search may violate the 4th Amendment to the Constitution made by Subterfuge or Fraud rather than by force. *Carroll* v. *U. S.* 267 U. S. 132. Defendant made unlawful searches for assets of the plaintiff's father.

Title 28 U.S.C.A. sec. 1343(1) Civil Rights, deprivation of any right of a citizen of U. S. by any act done in furtherance of any Conspiracy mentioned in sec. 47 title 8. Also title 18-sec. 241. *U. S.* v. *Patrick* C.C. Tenn. 1893 54 F 338, also *Avery* v. *State of Alabama*, Ala. 1940-60 S. Ct. 308 U.S. 444-84 L. ed. 377.

The questions presented by this appeal are:

1. Illegal Searches made by the respondent of the appellant's late father's assets, while still alive and in his last illness in the hospital in San Francisco, and in possession at the time, of the ring (7) keys, which contained a safety deposit box key of his. Article IV to Constitution. *Carroll* v. *U.S.*, 267 U.S. 132 (.....).

2. Defendant-appellee obtained confidential information (while making these unlawful Searches without a Court Order) before appellant's father's death, and regarding his assets and property from certain National Banks in San Francisco, Calfiornia, 12 U.S.C. sec. 38, Nat'l. Bank Act. Ch. 106 6 13 Stat. 101; *Christopher* v. *Norvell*, 291 U.S. S. Ct. 502 L. ed. 732.

3. The appellee's use of Information, Facts and Legal File and investigator, James S. Ball's report which he obtained from the appellant, Stella C. Davis, together with money to carry on an Interstate Fraud and Conspiracy with Ray M. Foreman, Assistant U. S. Attorney in Danville, Illinois. The defendant used Federal Communications and United States Mail to carry on this Fraud and Conspiracy upon the plaintiffs. *Magnum Import Co.* v. *McCoty*, N.Y. 1932, 43 S. Ct. 262 U.S. 159, 67 L. ed. 922 (p. .....). *Hoeppel* v. *U.S.*, 1936, 85 F. 2d, 66 App. D.C. Article 2 sec. 109 of Constitution. (p. .....) 18 U.S. Code sec. 371, 241, sec. 1343, (p. .....). 28 U.S.C. sec. 1343(1). (p. .....). 39 U.S.C. 1341.

4. The appellants were not notified of the September 27, 1956 Court Order Extending Time Of The Defendant to Answer the Complaint of the plaintiff, Stella C. Davis, either by the District Court or by the appellee. 18 U.S.

Code sec. 241-1343 and 28 U.S.C. 1332(1) violation of the Federal Rules of Procedure and Due Process Law. 3 Story Const. 264-661, *People* v. *Skinner,* Cal. 110 P. 2d 41 45 etc.

5. The district court took jurisdiction of the subject matter under a Civil Action when some of the allegations in the complaint are violations of the Criminal Code. 18 U.S.C. sec. 371, 241, 335, 1343(1) also 12 U.S.C. sec. 38, 28 U.S.C. sec. 1252, 507 1332.

6. The court overlooked the untrue statements in the Affidavit of appellee in support of his Motion to Dismiss contrary to his affidavit filed in Coles County Probate Court and some of the Exhibits filed in said District Court. Appellee had interest in probate proceedings.

7. The court granted appellee's Motion to Dismiss on November 20, 1956 without trying the issues of FACT and EVIDENCE presented by Exhibits and supporting Affidavits by the appellants filed in said court.

8. There are federal questions of Substance not theretofore determined by the Supreme Court of the U.S. in this cause of action involving an "Officer of the United States" and the Justice Department of the United States together with the appellee, Elliot W. Seymour. *Hoeppler* v. *U.S.*, 1936, 85 F. 2d 66 App. D.C. (p. .....) 28 U.S. Code 507.

9. Illegal Searches made by the appellee was a direct violation of Article 4 Amendment to the Constitution.

STATEMENT OF FACTS.

1. The plaintiff complains that on or about March 19, 1951, the defendant, Elliott W. Seymour, was employed by the plaintiff upon instructions of her attorney, Ray M. Foreman, Assistant United States Attorney, for the Eastern District of Illinois, via a long distance telephone conference to the Post Office in Danville, Illinois.

2. That during the course of said employment the defendant, Elliot W. Seymour procured Twenty Dollars ($20.00) cash, a key ring with seven keys (among of which were safety deposit box keys) that belonged to the plaintiff's father who was then in his last illness; copies of legal documents, and copies of a report by Investigator, James S. Ball. These copies amounted approximately to the sum of Five Hundred Dollars or more ($500.00) to compile.

3. The defendant, Elliot W. Seymour, held interviews with the plaintiff, Stella C. Davis for the purpose of:

(a) Investigating and seeking to determine the net worth of her father, William Daviditis, both in the City of San Francisco, County of San Francisco, State of California and in the State of Illinois.

(b) To obtain a guardian or conservator of the plaintiff's father in order to secure funds for his support and to preserve his assets.

(c) To ascertain his net worth through this purported conservatorship or guardianship as a depositor and customer of the National Bank of Mattoon, Illinois, and other financial institutions in Mattoon, Illinois wherein the plaintiff's father had financial and business dealings.

(d) To investigate the Separate Maintenance Action in The City Court of Mattoon, Illinois in conjunction with the National Bank of Mattoon's interest and participation in said action.

(e) To investigate into the irregularities of the aspects of said Separate Maintenance Decree ordered by the City Court of Mattoon, Illinois, whereas Josephine Daviditis, was out of the jurisdiction of said court and at the time residing in the City of San Francisco, California with her daughter, Matilda Marion, from on or about September 18, 1949 and was not physically present in the State of Ilinois until April 2, 1951.

4. That in pursuance of these matters the defendant obtained certain information and facts from the plaintiff, Stella C. Davis, which he represented would be used in making an investigation concerning the above mentioned irregularities or in obtaining a guardian or conservator in order to get funds for the support of the plaintiff's father who was in his last illness and to ascertain his net worth prior to September 9, 1949 and always thereafter during the defendants employment as her counsel in the State of California.

5. That in addition to and in furtherance of this scheme as the result of the information, the ring of keys (which included safety deposit box keys of the plaintiff's sick father) copies of legal documents and investigators report, obtained from the plaintiff by the defendant, Elliot W. Seymour, and who was also instrumental in aiding, Ray M. Foreman, Assistant United States Attorney for the Eastern District of Illinois, in securing the National Bank of Mattoon, Illinois, as administrator of the estate of the plaintiff's deceased father.

6. That, in fact, the defendant never filed any application petition or any other instrument in court or otherwise for a guardianship or conservatorship, but instead

kept stalling the plaintiff and her family until the plaintiff's father passed away on March 23, 1951. The defendant did not prepare or file any proceedings in the probate court of the City of San Francisco, California, said city where the plaintiff's father died in order to protect or preserve the assets of the plaintiff's father nor do anything else to protect the rights of the plaintiff as an heir before she left the State of California for the State of Illinois.

7. The defendant made unlawful searches of the plaintiff's father while he was still alive, using the ring of seven keys above mentioned as his authority to do so without legal permission granted him and made no effort to obtain release of any funds of the plaintiff's father from the Sea Board Branch of The Anglo California National Bank for medical and hospital bills of said plaintiff's ill father. The defendant did not assist in seeing that the funeral expenses were paid in order that they could take the plaintiff's father's body out of the state of California for burial in the State of Illinois.

8. The defendant entered into a conspiracy with his office employee thereby preventing the plaintiff from obtaining her legal file when it was necessary that she leave the State of California for transporting her father's body for burial in the State of Illinois, and at later dates ignored her requests for this file via long distance phone calls from Chicago, Illinois.

9. On August 28, 1952, the defendant gave the plaintiff's sister Betty Horrigan, a letter purporting to be a copy of the original letter that was supposed to be inclosed with copies of legal documents and investigators report and purported to have been mailed to the plaintiff in care of Ray M. Foreman, Esquire, Attorney at Law, Mattoon, Illinois whereas the defendant had the true

address of Said Ray M. Foreman, Assistant United States Attorney, United States Post Office, Danville, Illinois. By this act the said file above mentioned was never received by the plaintiff.

10. That in fact, the defendant never filed any information guardianship, special or regular probate proceedings or any other proceedings in spite of this purported investigation and acquirement of money, ring of keys, legal documents and copies of the investigator, James S. Ball report and as a result of this false, fraudulent and deceitful conduct, the plaintiff have suffered great loses in monies, bonds, realty, copies of legal documents, investigator's report and other valuable assets in the amount of Forty Thousand Dollars ($40,000.00).

Conclusion.

That there was a plain and manifest abuse of the discretion of the district court in granting the appellee's Motion to Dismiss appellant's cause of action in said court and the Plaintiffs pray for a reversal of the Order to Dismiss entered in said district Court on November 20, 1956.

Respectfully submitted,

Stella C. Davis, Pro Se.
4916 N. Magnolia Avenue,
Chicago, Illinois.

Betty Horrigan, Pro Se.
1303 Carmen Avenue,
Chicago, Illinois.

APPENDIX "A".

In The United States District Court
For the Northern District of California
Southern Division

Stella C. Davis,
Plaintiff,
Betty Horrigan,
Party Plaintiff,
Petitioner in Intervention,

vs.

Elliot W. Seymour,
Defendant.

Civil Action
No. 35831

DOCKET ENTRIES.

George B. Harris

For Plaintiff, and Petitioner in Intervention as Party Plaintiff, Pro Se. Stella C. Davis, 4916 N. Magnolia Ave., Chicago, Illinois.

Betty Horrigan, 1303 Carmen Avenue, Chicago, Illinois.

For defendant: Elliot W. Seymour, 785 Market Street, San Francisco, California, Pro Se.

Basis of Action: Title 28, Section 1332(1), Diversity of Citizenship and violations of Title 28, sec. 1343, sec. 1335, sec. 1339., Title 18, sec. 241, and sec. 1343, also Title 39, section 1341, of the U.S. Code —Seeks $40,000.00 plus costs, etc.

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In the Supreme Court
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OCTOBER TERM 1956

No. 791

STELLA C. DAVIS and BETTY HORRIGAN,
Appellants,

vs.

ELLIOT W. SEYMOUR,
Appellee.

MOTION TO DISMISS APPEAL AND ALTERNATIVE MOTION TO AFFIRM JUDGMENT.

ELLIOT W. SEYMOUR,
785 Market Street, San Francisco 3, California,
Appellee, In pro. per.

PERNAU-WALSH PRINTING CO., SAN FRANCISCO, CALIFORNIA

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In the Supreme Court
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OCTOBER TERM 1956

No. 791

STELLA C. DAVIS and BETTY HORRIGAN,
Appellants,
vs.
ELLIOT W. SEYMOUR,
Appellee.

MOTION TO DISMISS APPEAL AND ALTERNATIVE MOTION TO AFFIRM JUDGMENT.

The appellee, Elliot W. Seymour, moves the Court to dismiss the appeal of Stella C. Davis and Betty Horrigan, appellants herein, and in the alternative to affirm the judgment and order of the lower court.

STATEMENT OF FACTS.

The appellant Stella C. Davis, as plaintiff, on *September 12, 1956,* filed a civil action for damages in

the United States District Court for the Northern District of California, Southern Division, against appellee as defendant. (Transcript of record pages 1-5). Thereafter, appellant Betty Horrigan filed a petition to intervene in said action as a party plaintiff, but she failed to secure an order to intervene therein. The complaint is predicated on circumstances which allegedly occurred in the month of *March, 1951.*

Appellee, as defendant in said action, filed therein a written motion to dismiss said action with supporting affidavit, on the ground that the complaint failed to state a claim against defendant, upon which relief could be granted; and on the further ground that said action was barred by the California statutes on limitations of actions, Code of Civil Procedure sections 337 (4 years), 338 (3 years), and 339 (2 years).

The lower court, on November 29, 1956, after oral argument had on November 19, 1956, all parties being present, made and entered an order dismissing the complaint of Stella C. Davis, and the cause of action of Betty Horrigan as petitioner in intervention.

The appellants herein filed a notice of appeal from said order and decree on *December 24, 1956,* specifying United States Code, Title 28, section 1257 (2) and (3) as the statute under which the appeal to this Court is taken (Notice of Appeal, page 1, lines 28 and 29). Thereafter, and on or about January 14, 1957, the appellants filed an amended notice of appeal, specifying United States Code, Title 28, section 1252 as the statute under which the appeal to this Court is taken (Amended Notice of Appeal, page 1, line 24).

This case was docketed, and the record filed with the clerk of this Court on February 23, 1957. Appellee has never received any notice of or copy of any order enlarging the time for docketing this case.

MOTION TO DISMISS.

This motion to dismiss appeal is made on the ground that the appeal is not within the jurisdiction of this Court, because it has not been taken in conformity to any applicable statute, or to any statute, or in conformity to the rules of this Court.

It is unnecessary to argue to this Court that sections 1252 and 1257 of Title 28, U. S. Code, do not apply in this case. Section 1252 has to do with direct appeals from decisions invalidating acts of Congress, in proceedings to which the United States or any of its agencies, or an officer or employee thereof, as such, is a party. Section 1257 has to do with appeals under certain circumstances from final judgments or decrees rendered by the highest Court of a state. Obviously, neither of the sections is applicable in this appeal, nor is there any applicable statute under which, in the instant case, a direct appeal could be had to this Court.

Secondly, the appellants failed to comply with the provision of rule 13 of this Court in that they failed to docket the case and to file the record with the clerk of this Court within sixty days after the filing of their notice of appeal. The notice of appeal was filed December 24, 1956, and the case was docketed

February 23, 1957, being the sixty-first day after the filing of the notice of appeal. Consequently, the appellants failed to perfect their appeal within the time prescribed by said rule 13 of this Court.

MOTION TO AFFIRM THE JUDGMENT.

This alternative motion to affirm the judgment and decree of the lower court is made on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

The questions presented by this appeal are set forth on pages 4 and 5 of appellants' "Jurisdictional Statement and Brief," filed with the clerk of this Court on February 23, 1957. These questions are too absurd, unfounded and unsubstantial to require further answer or argument, and appellee will rely on the transcript of the record in this case.

Further, as appears from the record, appellee did not desire to base his motion to dismiss in the lower court, solely on the ground of the statute of limitations. The transcript of the record discloses that all of the facts were before the lower court, when the order appealed from was made and entered. However, it is apparent on the face of the complaint filed in the lower court by appellant Davis (Transcript of Record, pages 1-5) that if any cause of action existed, the same was barred by the California statutes on limitations of actions, Code of Civil Procedure, sections 337, 338 and 339 (supra).

It is respectfully submitted that the appeal by appellants should be dismissed on the ground the appeal is not within the jurisdiction of this Court, and for the further reason that the appeal was not docketed within the time allowed by the rules of this Court; and that in the alternative the decree and order appealed from should be affirmed.

Dated, San Francisco, California,
April 22, 1957.

ELLIOT W. SEYMOUR,
Appellee, In pro. per.

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OCTOBER TERM, A.D., 1956.

No. 791

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APPELLANT'S BRIEF OPPOSING APPELLEES MOTION TO DISMISS APPEAL AND ALTERNATIVE MOTION TO AFFIRM JUDGMENT

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APPELLANT'S BRIEF OPPOSING APPELLEES MOTION TO DISMISS APPEAL AND ALTERNATIVE MOTION TO AFFIRM JUDGMENT

The appellants, Stella C. Davis, and Betty Horrigan, Pro Se, moves this Court to dismiss the appellee's Motion To Dismiss Appeal and Alternative Motion to Affirm Judgment and Order of the lower court.

STATEMENT OF FACTS.

The appellant, Stella C. Davis, as plaintiff, on September 12, 1956, filed a civil action for damages in the United States District Court for the Northern District of California, Southern Division, against appellee, Elliot W. Seymour, (Trans. Rec. p. 1-5). On November 1, 1956, appellant, Betty Horrigan filed a petition to intervene in said action as party plaintiff, (Trans. Rec. p. 7), whereas on November 19, 1956, during the Hearing of Motion To Dismiss Action by defendant, Elliot W. Seymour, in the United States District Court, in the City of San Francisco, California, appeared, the appellant, Betty Horrigan, in person and made an Oral Motion to be granted an Order to Intervene therein. This Oral Motion was granted in Court by the Honorable George B. Harris, Judge of said District Court, thereby disputing the statement made by the appellee (Appellees Motion to Dismiss Appeal p. 2) that she failed to secure Order to intervene. In Fed. R. of Civ. P. rule 7, an application to the Court for an Order may be made during Hearing or Trial.

On November 9, 1956, appellants filed Affidavits (trans. Rec. pages 25-28 and 29-32) and on said date filed Exhibits in Support of Plaintiff's Affidavits (trans. Rec. pages 33 through 51). That under U.S.C. 28 sections 1332 and 1331, Diversity of Citizenship and Federal Questions in this cause of action gives the District Court original jurisdiction and since violations of their Constitutional and Civil Rights are asserted due to interstate conspiracy and unlawful searches (appellants jurisdictional statement and brief p. 2-3 "Misconduct & Color of Office" by an attorney, also together with an "Officer of the

United States and Justice Department" is involved in this Conspiracy which refutes the contention of the appellee that said action was barred by the California statutes on limitations of actions Code of Civil Procedure sections 337 (4 years), 338 (3 years) and 339 (2 years).

On December 4, 1956, the appellant, Stella C. Davis served a copy of the Notice of Appeal to The Supreme Court of the United States on appellee by mail and on said date sent the original copy to the clerk of the Court to be filed. The clerk of the U.S. District Court for Northern District of California, Southern Division filed this copy on the 24th day of December, 1956.

On January 11, 1957, the appellants filed a Petition for an Order directing the Clerk of said district Court to send them a certified copy of the Opinion rendered by Honorable George B. Harris, Judge of said District Court and a certified copy of his Order and proceedings held in said Court on November 19, 1956 in the above cause of action, and his approval of their Appeal Bond. The appellant and party appellant also request copies of the praecipe of the entire record in order to enable them to prepare their Petition and Brief for the Supreme Court of the United States (trans. Rec. p. 75), and their Appeal Bond was filed on December 24, 1956. Due to the fact that the appellants were representing themselves and mostly via United States mail, and the certificate of the clerk of the Court was dated January 25, 1957, the appellants had very little time left to prepare their Jurisdictional Statement and Brief to be printed and docketed prior to preparation of the above mentioned documents. The appellants on January 30, 1957, filed in the Supreme Court of the United States Motion For Extension of

Time For Filing Petition and Brief For A Writ of Certiorari or Bill of Review with Affidavit of Service dated January 28, 1957 to Elliot W. Seymour, appellee. On February 11, 1957, the appellants filed a Motion to correction line 11 of page 2 of Motion For An Amended Application for An Extension of Time within Which to File a Petition for Writ of Certiorari to Honorable Earl Warren, Chief Justice of the Supreme Court. The above mentioned proceedings in the Supreme Court of the United States show that the appellants were diligent in their attempts to perfect their appeal to said Court.

Appellants' Brief Opposing Motion To Dismiss Appeal and Alternative Motion to Affirm Judgment.

The appellants contend that the appellee's Motion to Dismiss Appeal that the appeal is not within the jurisdiction of this Court is in error and that Section 1252 U.S.C. 28 which has to do with direct appeals from decisions invalidating acts of Congress, to which a United States officer or employee thereof, is a party. Ray M. Foreman, was an Assistant United States Attorney in Danville, Illinois who is named in an interstate conspiracy with the appellee (appellants jurisdictional statement and brief p. 4-5). The appellee used Federal Communications and United States Mail to carry on this Fraud and Conspiracy upon the appellants. Article 2 sec. 109 of Constitution. Illegal Searches violation of Article IV to Constitution. 28 U.S.C. 1332 (1) violation of Federal Rules of Procedure and Due Process of Law. That there are Federal questions of Substance not theretofore determined by the Supreme Court of the United States in this cause of action involving an "Officer of The U.S. and Justice Department" together with the appellee, Elliot W. Seymour, 28 U.S.C. 507.

Conclusion.

It is respectfully submitted that the Motion To Dismiss Appeal and Alternative Motion to Affirm Judgment by the appellee should be dismissed and since there was a plain and manifest abuse of the discretion of the District Court in granting the appellee's Motion to Dismiss appellant's cause of action in said court the Plaintiffs pray for a reversal of the Order to Dismiss entered in said District Court on November 20, 1956.

Respectfully submitted,

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No. 791. DAVIS ET AL. *v.* SEYMOUR. Appeal from the United States District Court for the Northern District of California. *Per Curiam:* The motion to dismiss is granted and the appeal is dismissed for want of jurisdiction.